IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/12/2002

CORAM

THE HONOURABLE MR. JUSTICE K.P.SIVASUBRAMANIAM

WRIT PETITION NO.6383 OF 1995
AND WRIT PETITION NOS. 6384 and 6386 of 1995
and
W.P.M.P.Nos.10333, 10334 and 10337 of 1995

W.P.No.6383 of 1995

P.Parasuraman ..... Petitioner.

-Vs-

1. Pondicherry Engineering College,
represented by its Secretary and
Principal, Pondicherry.

2. S.Murthy

3. N.Ramalingam

4. M.Tamilselvam

5. S.Vengadesaperumal

6. M.Ilangovan

7. J.Govindarajulu ..... Respondents.

W.P.No.6384 of 1995

L.Manjini Petitioner.

/versus/

1. Pondicherry Engineering College,
represented by its Secretary and
Principal, Pondicherry.

2. S.Murthy

3. N.Ramalingam

4. M.Tamilselvam

5. Issoup Kane

6. S.Vengadesaperumal

7. M.Ilangovan Respondents.

W.P.No.6386 of 1995

E.Murugaiyane Petitioner.

/versus/

1. Pondicherry Engineering College,
represented by its Secretary and
Principal, Pondicherry.

2. G.Murthy

3. N.Ramalingam

4. M.Tamilselvam

5. Issoup Kane

6. S.Vengadesaperumal

7. M.Ilangovan

8. J.Govindarajulu Respondents.

Petitions filed under Article 226 of the Constitution of India praying for the issue of writs of certiorarified mandamus as stated therein.

For petitioner : Mr.V.Ajayakumar.

For respondents : Mr.T.Murugesan,
Govt. Pleader (Pondicherry).

:ORDER

In these three writ petitions, the petitioners seek for quashing the order of the first respondent dated 8.8.1995 and to direct the first respondent to place them in the list of seniority in 16th, 10th, 11 th place respectively, in the seniority list for Lower Division Clerk (L.D.C.) in the Pondicherry Engineering College, the first respondent herein.

2. It is sufficient to refer to the pleadings in W.P.No.6383

of 199 5 considering that the pleadings in all the three cases raise identical facts and points for consideration. The petitioner claims that he was working as an L.D.C. He joined the services of the respondents as Group 'D' employee on daily rate basis and later promoted to the post of L.D.C. on 25.6.1993, by which order 12 Attenders were promoted on the basis of the recommendations of the Departmental Promotion Committee (D.P.C.). While he was working as an Attender, the respondents had published a seniority list on 17.8.1992 whereunder the petitioner was placed in 9th in rank as per date of appointment. The promotion was made on the same date whereby 12 Attenders were promoted. The seniority list in the grade of L.D.C. was issued on 8.8.1994 wherein the seniority of L.D.Cs. from 10 to 22 were published. In terms of the said seniority, the petitioners name should come in the 16th place as per seniority of the Attenders and also as per the date of appointment. But the respondents had placed the petitioner in the twenty second place and had placed the juniors of the petitioner above him by completely disturbing the seniority as in the Attender post. The second respondent who was in the 15th place in the Attenders' list, has now been placed in the 10th rank. Likewise, the other respondents also who were lower down in the seniority in the Attenders' Seniority list have been placed above the petitioner. The petitioner is entitled to be placed in the seniority list in accordance with the list of the seniority of Attenders. Placing him below his juniors was arbitrary and discriminatory and violative of Articles 14 and 16 of the Constitution of India. It is further stated that the post of Attender is a Group 'D' post for which there is no maintenance of confidential report as per the Rules. Nor has the petitioner been informed about the maintenance of any confidential report. Therefore, there was no reason for disrupting the seniority as held by the petitioner while he was an Attender.

3. A counter affidavit has been filed by the respondents.
With reference to the issue raised for decision, the respondents would state that based on the Departmental Promotion Committee's (D.P.C.) recommendations the Government had promoted the attenders to the post of L.D.Cs. For fixing seniority in the promoted cadre, the D.P.C. took into account the performance report of the candidates in the panel. That was in compliance with the directions of the D.P.C. in the absence of confidential reports for Group 'D' staff. The filling up of the vacancy of L.D.C. post is by selection and the D.P.C. after perusing the performance report had recommended a list of candidates for promotion from the panel. Therefore, the contention of the petitioner that the seniority in L.D.C. cadre should be based on the seniority in the category of Attender, was not tenable. Though confidential reports are not required for Group 'D' staff, the Government of India guidelines provide for performance report even for Group 'D' staff with a view to maintain discipline and performance in the organisation. The contention of the petitioner that no adverse remark had been communicated to them, cannot be sustained since there is no adverse remark against the petitioner and the petitioner was included in the panel for promotion and was also promoted.

4. Subsequently, an additional counter affidavit has been filed on 26.6.2002. Respondents have contended that the petitioner had been

promoted as Upper Division Clerk (U.D.C.) in July, 2000 based on the seniority list of L.D.C. Thereafter tentative seniority list of L.D.C. including the petitioner was issued on 25. 10.2001 and objections were called for. The petitioner did not raise any objection regarding the seniority in the U.D.C. post. Therefore, nothing further survives in the writ petition.

5. Mr.Ajayakumar appearing for the petitioner contends that all the petitioners were promoted to the post of L.D.Cs. from the post of Attender which was a Group 'D' post and hence the promotion was purely on seniority basis and there was no question of any confidential report or assessment on merits of their performance when they were holding the post of Attenders. Therefore, in the promoted post also, the promotees ought to have been placed in the same level of seniority. Learned counsel refers to paragraph No.32 of Swamy's compilation of copies of Orders relating to Confidential Report which is as follows in support of his contention that there was no practice of writing confidential report for Group 'D' staff, namely memorandum dated 22.5.1975.
"Writing of CRs. of Group 'D' staff only if it serves public interest. - In the case of Ministries/Departments where Confidential Reports are not at present maintained for Group 'D' staff, the present practice may continue. Other Ministries/Departments should examine the necessity for continuing the practice of maintaining Confidential Reports for Group 'D' employees under them having regard to the specific purpose for which such reports are not at present being used. Where such reports are not required for any specific purpose or do not serve a public interest, the practice may be discontinued. In this connection, it may be borne in mind that in respect of Group 'D' staff entrusted with sensitive work it may be necessary to continue the system of Confidential Reports for maintaining efficiency in exercising proper control and discipline. These should be clearly identified by the Ministries with Departments concerned. Where the Confidential Reports are dispensed with, the punishments including recordable warnings, commendations, etc., conveyed to the employees, should be entered in the service book. (D.P. & A.R., O.M.No.51/3/74-Est. (A) dated the 22 nd May, 1975)"

6. He also relies on a judgment of the Delhi High Court in S.P. MATHURI v. UNION OF INIDA (1998 L.I.C., 2292) in which it was held that the action of the D.P.C. in not promoting the petitioner by ignoring the seniority when he had not been declared unfit for promotion and there was no entry against him, was invalid.

7. Per contra, Mr.T.Murugesan, learned Government Pleader (Pondicherry), contends that the promotion and fixation of seniority had been complied with in accordance with the Rules. D.P.C. after going through the records and considering the yearwise performance report of each of the promottee, had recommended promotions also indicating ranking of promotees. The recommendation of the D.P.C. was complied with in accordance with Clause 2.2. of the Consolidated orders of Seniority issued by the Government of India in their memorandum dated 3.7.1986 . In terms of the said provisions, seniority was fixed according to the recommendations of D.P.C. Learned Government Pleader further contends that the respondent institution was run by a society which was autonomous body and hence the writ petition was not

maintainable.

8. I have considered the submissions of both sides. On the issue of maintainability of the writ petition, it is not disputed that though the 1st respondent is an autonomous body, it is fully owned by the Government and controlled and governed entirely by the Government officials. In other words, the Institution belongs to the Government and hence I am inclined to hold that it satisfies the requirements of Article 12 of the Constitution of India and hence amenable to writ jurisdiction.

9. On the merits of the case, the following facts are not in dispute:-
The petitioners and respondents were originally working as Attenders. It is Group 'D' post. Seniority list is being maintained in the said Attender category and they were not subjected to any confidential roll or report. The said category is one of the feeder posts for the next promotional post of L.D.Cs. subject to the Attenders satisfying the other qualifications for the post of L.D.C. Seniority is therefore, the only test for promotion from among the Attenders. In the impugned promotion, the petitioners and the party respondents have been assigned seniority in the promoted post not in conformity with the seniority list in the category of Attenders, but in a different order of seniority. In the above background the question which arises for consideration is as to whether such a course is permissible.

10. Apart from the fact that no confidential records are maintained in respect of attenders and is not disputed by the respondent, the memorandum dated 22.5.1975 extracted above, will also disclose that confidential reports are not to be adopted for Group 'D' staff. That being so, the stand of the respondents that there was a Performance Report for all the candidates is paradoxical. In whatever name by which it is called either as "Confidential Report" or "Performance Report" and if it could be used to the disadvantage of an employee, then it should be held as impermissible. If the conduct of a person is so undesirable, then he shall not be considered at all. But if he is found fit enough to be considered, then there can be no discrimination on the basis of any Performance Report. The memo dated 22.5.1975 extracted above, makes only one exception namely where Group 'D' is entrusted with sensitive work. In the present case, it is not the case of the respondents that the petitioners were discharging any sensitive work nor was any C.R.maintained for them. Therefore, the so called consideration of performance report is not permissible. Further, maintaining such a secret record is worse than the rigour of a Confidential Report. At least in the matter of maintaining Confidential Reports, if any adverse entry is made, then it is the duty of the employer to disclose the adverse entry and the employee has a right to challenge the same. But in the present case of undisclosed performance report, such requirements are not contemplated, which goes against basic rules of fairness.

11. The further defence that the respondents had to comply with the recommendations of D.P.C. is also not acceptable. Firstly, when once the very basis of D.P.C. ranking itself is invalid namely, the consideration of Performance Report, recommendation of D.P.C. can have no

better sanctity. Secondly, the very memorandum relied upon by the learned Government Pleader namely, paragraph No.2.2 of the consolidated orders of seniority dated 3.7.1986 itself signifies that where promotions are made on the basis of the seniority subject to the rejection of the unfit persons, the seniority shall be the same as the relative seniority in the lower grade from which they are promoted. Paragraph No.2.2 is extracted below:-

"2.2. Where promotions are made on the basis of selection by a DPC, the seniority of such promotees shall be in the order in which they are recommended for such promotion by the Committee. Where promotions are made on the basis of seniority, subject to the rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be same as the relative seniority in the lower grade from which they are promoted. Where, however, a person is considered unfit for promotion and is superseded by a junior, such persons shall not, if he is subsequently found suitable and promoted, take seniority in the higher grade over the junior persons who had superseded him." (emphasis supplied)

12. The above extract clearly signifies that if the candidate is considered to be unfit, his claim shall be rejected as unfit. But when once he is found fit to be promoted, he shall be promoted only in accordance with the seniority from the feeder category. In fact, it is admitted in the counter itself that there are no adverse remarks as against the petitioner. That being so, there can be no discrimination between similarly placed candidates while fixing the seniority.

13. The further contention raised in the additional counter affidavit that subsequently the petitioners have been promoted as Upper Division Clerks, cannot stand in the way of the writ petitions being ordered. Considering that the writ petitions are pending and in the event of the petitioners succeeding in the writ petitions, they are naturally entitled to all the consequential benefits. The fact that they were promoted subsequently for a higher post, and seniority was fixed in that category cannot deprive the petitioners of their legitimate rights flowing under the orders to be passed in these writ petitions. Considering the pendency of these writ petitions, there is no need for them to have filed another set of writ petitions regarding seniority in U.D.C.category. It is not contended before me that selection to the post of U.D.C. can be made by overlooking the seniority in the L.D.C. category. The only point which is contended before me is that the cadre strength of U.D.C. is filled by promoting the Degree holder first and the non-degree holder next in the ratio of 1:1. Except for the said condition, the rights of parties in these writ petitions would be governed by the consequential re-arrangement of seniority in the L.D.C.category.

14. In the result, the petitioners are entitled to succeed and the writ petitions are ordered as prayed for. The petitioners shall be entitled to all the consequential benefits including the seniority in the cadre of U.D.C., subject to what is mentioned in the previous paragraph. No costs. Connected miscellaneous petitions are closed as unnecessary.

Index: Yes.
Internet : Yes.

sai/-

To

The Secretary and Principal,
Pondicherry Engineering College,
Pondicherry.